IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

Supreme Court, U.S.
FILED
DEC 18 1970
E. ROBERT SEAVER, CLERK

No. 633

CANDIS O. RAY, t/a CANDIS O. RAY AGENCY,
Petitioner,

v.

KANSAS CITY STOCKYARDS COMPANY OF MAINE, A CORP., t/a GOLDEN OX RESTAURANT, *ET AL.*,

and

RUTH G. GRAZE,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JACK H. OLENDER,
910 - 17th Street, N. W.
Washington, D. C. 20006
Attorney for Respondents,
J. Gregory Aires, t/a Aires Publishing Co., Impact Advertising Agency, Inc., and Ruth G. Graze

THE CASILLAS PRESS, INC.—1717 K Street, N. W.—Washington, D. C.—223-1220

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Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ORDERS BELOW

Petitioner purports to seek review of the following Orders of the United States Court of Appeals for the District of Columbia Circuit:

(a) Orders of April 28, 1970 and June 3, 1970 in Number 23789 Candis O. Ray, t/a Candis O. Ray Agency, Appellant, v. Kansas City Stock Yards Company of Maine, t/a Golden Ox Restaurant, *et al.* (A. 1;2)

(b) Order of February 16, 1967 in Number 20444, Candis O. Ray, Appellant, v. Ruth G. Graze, Appellee. (A. 3)

JURISDICTION

A. The Orders in Number 23789 for which Petitioner seeks review do not appear to involve these Respondents, J. Gregory Aires, t/a Aires Publishing Co., Impact Advertising Agency, Inc., and Ruth G. Graze in any way. The Respondent Ruth G. Graze was not even a party to that action and the Respondents J. Gregory Aires, t/a Aires Publishing Co., and Impact Advertising Agency, Inc. were not parties to the Appeal.

B. The Order in Number 20444 was entered February 16, 1967, more than three and one-half years prior to the Petition's filing. That appeal involved the Respondent Ruth G. Graze but did not involve the Respondents J. Gregory Aires, t/a Aires Publishing Company, and Impact Advertising Agency, Inc.

STATUTE INVOLVED

28 USCA 2101, Supreme Court; time for appeal or certiorari; docket; stay.

> "(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days."

QUESTIONS PRESENTED

1. Whether Petitioner has standing to seek review as against Respondent Ruth G. Graze of a final Order of the Court of Appeals three and one-half years after it is entered.

2. Whether Petitioner has standing to seek review as against Respondents J. Gregory Aires, t/a Aires Publishing Co., Impact Advertising Agency, Inc., and Ruth G. Graze of an Order of the Court of Appeals in an appeal that did not involve these three Respondents.

3. Whether the record herein provides a scintilla of support for Petitioner's allegations that the Attorneys and Judges involved engaged in collusion and fraud to violate Petitioner's rights of equal protection and due process of law.

STATEMENT OF THE CASE

A suit alleging infringement of copyright was filed by Petitioner Candis O. Ray, t/a Candis O. Ray Agency, against Kansas City Stockyards Company of Maine, t/a Golden Ox Restaurant; National Broadcasting Company; Impact Advertising Agency and J. Gregory Aires, t/a Aires Publishing Company, on January 20, 1965 in the United States District Court for the District of Columbia, Civil Action No. 187-65.

On March 29, 1965, Ruth G. Graze filed a suit alleging slander against Candis O. Ray in the United States District Court for the District of Columbia, Civil Action No. 737-65.

Petitioner's complaints in this present proceeding as well as in grievance proceedings against the attorneys involved herein and in attempts to have the attorneys involved herein indicted for crimes all seem to center

around a deposition which her counsel took of one Charles F. Snyder in Civil Action Number 187-65. Her counsel noted the deposition for March 25, 1965, then continued the date to April 5, 1965 on which occasion counsel for these Respondents appeared and was advised by Petitioner's counsel that the deposition was continued to April 14, 1965. This date conflicted with an important Bar Association Committee meeting Respondent's counsel had previously scheduled and when Petitioner's counsel refused to change the time or date, Respondent's counsel filed and served on other counsel prior to the scheduled deposition time a Motion to Continue Deposition. (A. 4) Petitioner's counsel proceeded to take the deposition and Respondent's counsel filed a Supplemental Prayer to the Motion requesting that the transcript of the deposition "not be permitted filing . . . and be held for nought." (A. 7) After argument in open Court the Honorable Luther W. Youngdahl on May 17, 1965 granted the Motion requesting that the deposition not be used for any purpose but permitting the deposition to be taken again. (A. 8)

The slander suit was tried without a jury before the Honorable Oliver Gasch on April 4, 5, 1966 which resulted in a judgment in favor of Respondent Ruth G. Graze against Petitioner Candis O. Ray in the amount of $250.00 compensatory damages and $250.00 punitive damages. Petitioner appealed that judgment to the United States Court of Appeals for the District of Columbia Circuit in Appeal Number 20444 and the judgment of the District Court was affirmed on February 16, 1967. (A. 3) No further action was taken by Petitioner regarding this slander action until her filing of the instant petition on September 1, 1970.

On August 26, 1966, the Petitioner executed, for consideration of $2,000.00, releases and praecipe of dismissal of the infringement action as to Respondents Kansas City

Stock Yards of Maine, t/a Golden Ox Restaurant and NBC. She subsequently, beginning in September, 1969, filed various motions to set aside the partial settlement all of which were denied by the District Court and she appealed to the United States Court of Appeals for the District of Columbia Circuit in Number 23789 which appeal was dismissed April 28, 1970 (A. 1), and rehearing denied June 3, 1970. (A. 2) Petitioner seeks review of these Orders herein.

Petitioner filed with the Committee on Admissions and Grievances, United States District Court for the District of Columbia, a complaint against lawyers, including her own lawyer, involved in the infringement case and the slander case. Counsel for these Respondents filed an Answer under Oath to the Complaint denying any conspiracy to defraud petitioner or any other wrongdoing (A-8), as did the other counsel.

On June 17, 1968 the Grievance Sub-Committee notified Petitioner that "It was the conclusion of the Committee that the record does not disclose facts which, in its opinion, would warrant it in seeking disciplinary action against the attorneys involved." (A. 11) Subsequently, Petitioner was able to get the Committee to reopen the matter for hearing but she has had scheduled hearings postponed so that the Complaint is still pending without a hearing ever being held.

According to statements made by the Petitioner in the United States District Court for the District of Columbia, she has also been attempting to have the lawyers involved indicted for crimes which she alleges were committed by them presumably regarding the taking of the deposition of Charles F. Snyder. Apparently no indictments have been obtained.

ARGUMENT

I. PETITIONER HAS NO STANDING TO SEEK REVIEW AS AGAINST RESPONDENT RUTH G. GRAZE OF FINAL ORDER OF COURT OF APPEALS THREE AND ONE-HALF YEARS AFTER IT IS ENTERED.

The slander action which resulted in an affirmance against Petitioner by the United States Court of Appeals for the District of Columbia Circuit on February 16, 1967, is sought to be reviewed by Petitioner some three and one-half years late. Petitioner brushes aside the time limitations of 28 USCA 2101(c) with the statement at page 6 of her Petition that the conduct of counsel which she perceives as fraud and collusion "vitiates the time statute". Petitioner was represented by competent and experienced counsel in the slander trial and appeal. Perhaps it is significant that she has not filed complaints with the grievance committee against her trial and appeal counsel in the slander suit and she apparently has not sought indictments against said counsel. Her counsel made all relevant arguments for her in the trial and appeal of the slander suit and it should not be re-opened at this time.

Assuming *arguendo* that fraud would vitiate the "time statute" as argued by Petitioner there is not a scintilla of evidence of fraud, as argued below in Argument III.

II. PETITIONER HAS NO STANDING TO SEEK REVIEW AS AGAINST RESPONDENTS J. GREGORY AIRES, T/A AIRES PUBLISHING CO., IMPACT ADVERTISING AGENCY, INC., AND RUTH G. GRAZE OF AN ORDER OF THE COURT OF APPEALS IN AN APPEAL THAT DID NOT INVOLVE THESE THREE RESPONDENTS.

The Orders in Number 23789 involve Petitioner's attempts to set aside her settlement agreement with Respondents Kansas City Stockyards Company of Maine, t/a Golden Ox Restaurant and NBC in the infringement

suit. It does not involve Respondents J. Gregory Aires, T/A Aires Publishing Company and Impact Advertising Agency, Inc. as Petitioner did not settle with them and her claims against them are still pending in the District Court after two dismissals for Petitioner's failure to appear for pre-trial (A. 12) and trial were set aside. Ruth G. Graze was not even a party to the infringement suit.

It seems perfectly clear that these Respondents are in no way involved in the review of the Orders in Number 23789 involving the attempted setting aside of a settlement and release.

III. THERE IS NOT A SCINTILLA OF SUPPORT FOR PETITIONER'S ALLEGATIONS THAT THE ATTORNEYS AND JUDGES INVOLVED ENGAGED IN COLLUSION AND FRAUD TO VIOLATE PETITIONER'S RIGHTS OF EQUAL PROTECTION AND DUE PROCESS OF LAW.

Petitioner has pieced together every occurrence in her unsuccessful litigation as part of a scheme of fraud, conspiracy and collusion on the part of her own counsel, adverse counsel and Federal Judges all calculated to deprive her of her rights. Nothing could be further from the truth. The proceedings below were fiercely adversary. In fact, District Court Judge Luther W. Youngdahl admonished Petitioner's counsel for failure to observe common courtesies in ignoring these Respondents' counsel's request for a rescheduling of a deposition. It is around this deposition that Petitioner builds her idea of conspiracy. This is denied under oath in this counsel's Answer to the Grievance Complaint (A. 9) and in the other counsel's Answers to the Grievance Complaint and the circumstances demonstrating the strict adversary nature of the proceedings are set out in the Motion to Continue Deposition (A. 4) and Supplemental Prayer. (A. 7)

It is unfortunate that Petitioner has viewed honest competent and loyal counsel and an impartial judiciary as conspirators against her. However, it is perhaps more unfortunate for the innocent victims who are being dragged through a seemingly endless gantlet of court proceedings and complaints because of Petitioner's mistaken views of her litigation disappointments.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

JACK H. OLENDER
910 Seventeenth Street, N.W.
Washington, D.C. 20006
Attorney for Respondents

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1969

[Filed April 28, 1970, United States Court of Appeals
for the District of Columbia Circuit.
/s/ Nathan J. Paulson, Clerk.]

Civil 187-65

No. 23,789

CANDIS O. RAY t/a CANDIS O. RAY AGENCY,
Appellant,

v.

KANSAS CITY STOCK YARDS COMPANY OF MAINE,
t/a GOLDEN OX RESTAURANT, ET AL.

Before: Bazelon, Chief Judge, MacKinnon,
Circuit Judge, in Chambers.

ORDER

On consideration of appellees' motion to dismiss the appeal and of the responsive pleadings filed with respect thereto, it is

ORDERED by the Court that appellees' aforesaid motion be granted and this appeal is dismissed. See *Mayfair Extension Inc. v. Magee*, 241 F.2d 453, 100 U.S. App. D.C., 48 (1957).

Per Curiam

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1969

[Filed June 3, 1970, United States Court of Appeals
for the District of Columbia Circuit,
/s/ Nathan J. Paulson, Clerk.]

Civil 187-65

No. 23,789

CANDIS O. RAY t/a CANDIS O. RAY AGENCY,
Appellant,

v.

KANSAS CITY STOCK YARDS COMPANY OF MAINE,
t/a GOLDEN OX RESTAURANT, ET AL.

Before: Bazelon, Chief Judge, MacKinnon,
Circuit Judge, in Chambers.

ORDER

On consideration of appellant's petition for rehearing, it is

ORDERED by the Court that appellant's aforesaid petition is denied.

Per Curiam
For the Court:

NATHAN J. PAULSON
Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1966

[Filed Feb. 16, 1967, United States Court of Appeals for the District of Columbia Circuit, /s/ Nathan J. Paulson, Clerk.]

Civil 737-65

No. 20,444

CANDIS O. RAY,

Appellant,

v.

RUTH G. GRAZE,

Appellee.

Appeal from the United States District Court for the District of Columbia

Before: Prettyman, Senior Circuit Judge, and Burger and McGowan, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, affirmed.

It is further ORDERED by the Court that appellee herein recover from appellant her taxable costs on this appeal, and have execution therefor.

Per Curiam

Dated: Feb. 16, 1967

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL DIVISION

CANDIS O. RAY, t/a CANDIS O. RAY AGENCY, *Plaintiff,* v. KANSAS CITY STOCK YARDS COMPANY OF MAINE, A CORPORATION t/a GOLDEN OX RESTAURANT, et al., *Defendants.*	Civil Action No. 187-65

MOTION TO CONTINUE DEPOSITION

Now comes, Jack H. Olender, Attorney for Impact Advertising, Inc., and moves the Court continue the taking of the deposition of Charles F. Snyder, from April 14, 1965 at 4:00 P.M. to a later date, and states as reasons therefor, the following:

1. Your movant received Plaintiff's Notice to Take Deposition of Charles F. Snyder with the designated time being March 25, 1965, at 4:00 P.M. and the designated place being Room 1053 National Press Building.

2. Subsequently, your movant was informed that the deposition was continued to April 5, 1965 at the same time and place.

3. Your movant did go to the designated place at the designated time and was told by James S. Gardiner, Esq., attorney for plaintiff, that the deposition was now continued to April 14, 1965, 4:00 o'clock, and that Mr. Gardiner had had someone in his office and so did not call your movant to notify him of the continuance.

4. Your movant later discovered that he already had a meeting to attend scheduled by the Negligence Committee of the Bar Association of the District of Columbia on April 14, 1965, 4:00 o'clock which meeting will be devoted to matters important to the development of tort law and traffic safety in the District of Columbia. Your movant mailed plaintiff's attorney a letter on April 9, 1965, stating:

> "Regarding the deposition now re-set for April 14, 4:00 o'clock, I have a Bar Association committee meeting which I must attend at that time. I will be free prior to 3:30 o'clock on that afternoon and all afternoon on April 13, 15, 20, 22. I will appreciate your re-setting the deposition and advising me."

5. Your movant received on April 13, 1965, the following letter from plaintiff's attorney:

> "This is to acknowledge receipt of your letter dated April 9th concerning a continuance of the deposition scheduled for April 14th at 4:00 p.m. I have consulted my client, who advised me that her schedule will not permit a continuance of the deposition. Also, my schedule conflicts with yours.

I am sorry that we can not accommodate you on this matter, but if I had known of the situation on April 5th, I could have made other arrangements."

WHEREFORE, it is respectfully prayed that the Court order the continuance of the deposition of Charles P. Snyder from April 14, 1965, 4:00 P.M., to a later date convenient to respective counsel.

Respectfully submitted,

/s/ JACK H. OLENDER
Attorney for Impact Advertising, Inc.
910 – 17th Street, N.W.
Washington, D.C.
296-8984

[Certificate of Service, dated April 14, 1965]

POINTS AND AUTHORITIES

Federal Rules of Civil Procedure, Rule 6(b).

Inherent Powers of Court.

/s/ JACK H. OLENDER
Attorney for Impact Advertising, Inc.

DEFENDANT IMPACT ADVERTISING, INC.'S SUPPLEMENTAL PRAYER TO MOTION TO CONTINUE DEPOSITION

Now comes Jack H. Olender, attorney for Impact Advertising, Inc., and respectfully represents to the court as follows:

1. His secretary, Mr. William W. Colby, served the Motion filed herein by hand on James S. Gardiner, Esq., attorney for plaintiff, on April 14, 1965, before noontime. Mr. Gardiner read the motion and advised Mr. Colby to inform counsel for Impact Advertising, Inc., that Mr. Gardiner was proceeding with the deposition of Mr. Charles F. Snyder as scheduled.

2. Your movant is advised and, therefore, avers that despite the motion filed herein, Mr. Gardiner did in fact, take the deposition of Mr. Snyder as scheduled, April 14, 1965.

WHEREFORE, your movant prays (1) that the court order the transcript of the deposition of Charles F. Snyder taken April 14, 1965 not be permitted filing in this case and be held for nought, and (2) that the court allow counsel for defendant Impact Advertising, Inc. reasonable counsel fees against plaintiff and against plaintiff's attorney, James S. Gardiner, Esq.

Respectfully submitted,

/s/ JACK H. OLENDER
Attorney for Impact Advertising Inc.

[Certificate of Service, dated April 21, 1965]

ORDER

This Matter having come on by motion and supplemental prayer of defendant Impact Advertising, Inc., and by opposition thereto by plaintiff and by defendant Kansas City Stock Yards Company of Maine, and by argument of counsel, it is by the Court, this 17th day of May, 1965,

ORDERED,

1. That the deposition of Charles F. Snyder taken on April 14, 1965, not be used for any purpose in this cause;

2. That the deposition of Charles F. Synder may be taken upon the filing of a Notice of Taking Deposition; and

3. That if the deposition of Charles F. Snyder is taken, the party taking it will pay Twenty-Five ($25.00) Dollars counsel fees to Hans A. Nathan, Attorney for defendant Kansas City Stock Yards of Maine.

/s/ LUTHER W. YOUNGDAHL
JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA
COMMITTEE ON ADMISSIONS AND GRIEVANCES

In the Matter of
Complaint of Candis O. Ray
Against
James S. Gardiner,
Hans A. Nathan, and
Jack H. Olender

ANSWER OF JACK H. OLENDER

DISTRICT OF COLUMBIA, ss:

Jack H. Olender, being first duly sworn on oath according to law depones and says as follows:

1. That he is a member of the Bar of this Court and does represent Impact Advertising Inc. and Gregory J. Aires, T/A Aires Publishing Company, in Civil Action No. 187-65, in which the complainant Candis O. Ray appears as plaintiff; and that he did represent Ruth G. Graze in Civil Action No. 737-65 and Appeal No. 20,444 in the United States Court of Appeals for the District of Columbia Circuit in which the complainant appeared, respectively, as defendant and appellant.

2. That he at no time entered into any conspiracy with Candis O. Ray's former counsel James S. Gardiner, Esq., and/or Hans A. Nathan, Esq., attorney for Kansas City Stock Yards Company of Maine, and for National Broadcasting Company, Inc., in Civil Action No. 187-65, or with anyone else regarding complainant's cause or causes.

3. That he does not have and does not have knowledge of many of the documents referred to in the Complaint but does not deem them necessary to this Answer.

4. That he incorporates herein as Exhibit A the attached copy of Motion to Continue Deposition, Points and Authorities, and Defendant Impact Advertising, Inc.'s Supplemental Prayer to Motion to Continue Deposition.

5. That he was served with a notice to take the deposition of Charles F. Snyder, in Civil Action No. 187-65, with the designated date being March 25, 1965. Subsequently, he received notice that the said deposition would be taken April 5, 1965, 4:00 p.m., at Room 1053

National Press Building, and having received no notice or indication from anyone that the said deposition would not be taken at that time and place, he appeared for the deposition. He was advised by Mr. Gardiner that the deposition had been continued to April 14, 1965, at 4:00 p.m. To the best of his recollection, he did not see the complainant in Mr. Gardiner's office when he appeared for the deposition April 5, 1965, and engaged in no conversation with her.

6. That subsequent to April 5, 1965, he became aware of a previously scheduled meeting of the negligence committee of the Bar Association of the District of Columbia, in which committee he took an active part, for April 14, 1965 at 4:00 p.m. He requested Mr. Gardiner by letter dated April 9, 1965, to reset the deposition for another time or date, and Mr. Gardiner, by letter received April 13, 1965, declined to do so.

7. That he had his secretary serve by hand the attached Motion and Points and Authorities on Mr. Gardiner and Mr. Nathan, before noon-time, April 14, 1965, and the original filed in Court. His secretary advised him that Mr. Gardiner had read the pleadings and was proceeding with the deposition. He then talked by telephone with Mr. Nathan, informed Mr. Nathan that in his opinion it would be highly improper to proceed with the deposition with the motion pending and that, under the circumstances, Mr. Nathan could properly refrain from producing Mr. Snyder, an employee of one of his clients, for deposition pending determination of the motion. Mr. Nathan indicated he would produce Mr. Snyder for the deposition on 4:00 p.m. that day, and your respondent indicated that he would move to prevent the deposition from being filed in the case. He at no time "agreed" or conspired with Mr. Nathan or anyone else to move to suppress the deposition, but announced his intention to move to exclude use of the deposition and successfully

so moved to protect his client's interests under the applicable rules.

8. That Opposition to Motion to Continue Deposition was filed by Mr. Gardiner and that, to the best of his recollection, Mr. Gardiner did orally argue against your respondent's motion.

9. That the proceedings complained of were, contrary to the allegations of the complaint, completely "adversary" in every sense of the word.

10. That he does not have knowledge of the other allegations of the complaint which do not pertain to him.

/s/ JACK H. OLENDER

Subscribed and sworn to this _____ day of February, 1968.

/s/ _____

Notary

My commission expires _____

United States District Court for the District of Columbia
Committee on Admissions and Grievances
ROOM 6409 UNITED STATES COURT HOUSE
Washington, D.C. 20001

June 17, 1968

Miss Candis O. Ray
Candis O. Ray and Associates
1545 Eighteenth Street, N.W.
Washington, D.C. 20036

At its meeting held on Friday last, the Grievance Subcommittee carefully reviewed your complaint against

attorneys Hans A. Nathan, James S. Gardiner and Jack H. Olender, the answers filed by the attorneys, and your comments on the answers filed.

C O P Y

It was the conclusion of the Committee that the record does not disclose facts which, in its opinion, would warrant it in seeking disciplinary action against the attorneys involved. Accordingly, the complaint was dismissed.

Yours very truly,

/s/ RALPH A. CURTIN
Secretary

cc: Hans A. Nathan, Esq.
James S. Gardiner, Esq.
Jack H. Olender, Esq.

[Filed, February 11, 1969]

ORDER VACATING DEFAULT ON COUNTERCLAIMS AND DISMISSAL OF CAUSE

This cause having been duly assigned for pretrial this 11th day of February, 1969, and the default on defendants' counterclaims and the dismissal of the cause having been declared by orders of the Court of January 14, 1969, it having been further declared that said orders would be vacated if plaintiff appeared at the pretrial on this date, and plaintiff having appeared at said pretrial; the case having been pretried, it is

ORDERED: That the default on defendants' counterclaims be and it hereby is vacated, and that the dismissal of the cause be and is hereby vacated, the case being restored to the calendar.

A TRUE COPY
Robert M. Stearns, Clerk
/s/ JAMES P. CAPITANIO,
Deputy Clerk

/s/ JOHN J. SIRICA
Judge